

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Renee Castro, et al.,

NO. C 09-01575 JW

Plaintiffs,

**ORDER GRANTING DEFENDANT
COUNTRYWIDE HOME LOANS, INC.'S
APPLICATION TO SET ASIDE DEFAULT**

v.

American Mortgage Express Corp., et al.,

Defendants.

Presently before the Court is Defendant Countrywide Home Loans, Inc.'s ("Countrywide") Application to Set Aside Default. (hereafter, "Motion," Docket Item No. 6.) Countrywide seeks to have the entry of default entered as to it while this case was proceeding in state court set aside. Plaintiffs filed a timely opposition.¹

The Court finds it appropriate to take the matter under submission without oral argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court GRANTS Defendant Countrywide's Application to Set Aside Default.

A. Background

On January 8, 2009, Plaintiffs filed this action in the Superior Court of the State of California, alleging that Defendants, *inter alia*, violated the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601, *et seq.*, the Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.*, and wrongfully foreclosed on Plaintiffs' property. (Notice of Removal, Ex. B., Docket Item No. 1.) On January 28,

¹ (Opposition to Countrywide Home Loans, Inc.'s Application to Set Aside Default, hereafter, "Opposition," Docket Item No. 11.)

2009, C.T. Corporation System (“C.T.”), an authorized agent to receive process on behalf of Countrywide, received service of process on behalf of Countrywide.² On March 25, 2009, Countrywide received a Notice of Default. (Garnier Decl., Ex. C.) On April 10, 2009, Defendant ReconTrust Company removed the action pursuant to 28 U.S.C. §§ 1331 and 1446. (Notice of Removal ¶ 8.)

B. Discussion

Countrywide moves to set aside the default entered against it on the ground that its failure to respond to Plaintiffs’ Complaint was due to excusable neglect. (Motion at 5-6.)

Rule 55(c) states in relevant part, “[f]or good cause shown the court may set aside an entry of default.” Fed. R. Civ. P. 55(c). Unlike Rule 60(b), which provides that a court may relieve a party from a final default judgment “on motion,” Rule 55(c) requires only a “good cause showing.” The Ninth Circuit has set forth a three-factor test to determine if “good cause” exists: (1) whether defendant’s culpable conduct caused the default; (2) whether defendant appears not to have a meritorious defense; and (3) whether plaintiff would be prejudiced by setting the default aside. TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001) (citing Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984)). The Falk test is disjunctive; thus, the court may refuse to set aside default based upon any of the factors. Am. Ass’n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1108-09 (9th Cir. 2000).

Here, Countrywide contends that its failure to respond to Plaintiff’s Complaint due to an internal clerical error, and supports its position with the following explanation regarding its procedure for responding to law suits:

In light of the tremendous amount of law suits filed against Bank of America, Countrywide’s parent corporation, and its subsidiaries, Bank of America has adopted a system for channeling complaints.³ (Garnier Decl. ¶ 1-3.) When C.T. receives services on behalf of Countrywide, the process is uploaded to a database. (Garnier Decl. ¶ 3.) The Case

² (Declaration of Miles A. Garnier in Support of Countrywide Home Loans, Inc.’s Application to Set Aside Default, Ex. A., hereafter, “Garnier Decl.,” Docket Item No. 7.)

³ In March 2009, Bank of America was served with a total of 1,647 items of process. (Garnier Decl. ¶ 6.)

1 Assignments department at Bank of America is responsible for reviewing all process served
2 and routing it to the appropriate department. (Id.) When a lawsuit is filed against
3 Countrywide, the Case Assignments department forwards the process and any other
4 information to a managing attorney in the Countrywide litigation department. (Id. 4.) When
5 the Case Assignments department receives process related to a non-adversarial action, the
6 process is entered into a database called Correspondence & Imaging Workflow Integration
7 (“CIWI”). (Id. ¶ 5.)

8 On January 27, 2009, one day after receiving service, C.T. uploaded the process to its
9 database. (Garnier Decl. ¶ 7, Ex. A.) On February 3, 2009, Supatra Ostrander, a contract
10 employee in Bank of America’s Case Assignments department, uploaded the process for this
11 action into the CIWI database. (Id. ¶ 8.) Subsequent employees who handled the matter
12 were unsure where to direct it because it had been categorized as a non-adversarial action.
13 (Id.) On April 1, 2009, after receiving Countrywide’s Notice of Default, Bank of America
14 forwarded the documents concerning this case to the Countrywide legal department. (Id. ¶
15 12.)

16 Based on the evidence presented above, the Court finds Countrywide’s delay was the result of
17 excusable neglect. Plaintiffs do not present any direct evidence to contradict the declarations
18 provided by Countrywide.


19 With respect to whether Countrywide has a meritorious defense, the parties provide lengthy
20 briefing on the adequacy of Plaintiffs’ allegations. (See Motion at 6-8; Opposition at 4-7.) Without
21 addressing the merits of the parties’ contentions, the Court finds that Countrywide has sufficiently
22 shown that it has potentially meritorious defenses to Plaintiffs’ claims. Moreover, Plaintiffs do not
23 show that they will be prejudiced in any way if the default as to Countrywide is set aside.

24 Accordingly, the Court GRANTS Defendant Countrywide’s Application to Set Aside
25 Default.

26 **C. Conclusion**

27 The Court GRANTS Defendant Countrywide’s Application to Set Aside Default.
28 Countrywide shall respond to the Complaint pursuant to Rule 12 of the Federal Rule of Civil
Procedure on or before **July 20, 2009**.

Dated: June 23, 2009



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Andrew Weiss Noble awn@severson.com
3 Lawrence Pedro Ramirez lpramirez@thellg.com
4 Mark Joseph Kenney mjk@severson.com
5 Michael Jan Steiner mjs@severson.com

6 **Dated: June 23, 2009**

Richard W. Wieking, Clerk

7 **By: /s/ JW Chambers**
8 **Elizabeth Garcia**
9 **Courtroom Deputy**